

JUL 31 2008

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUVENILE MALE,

Defendant - Appellant.

No. 06-10368

D.C. No. CR-04-05171

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Anthony W. Ishii, District Judge, Presiding

Submitted July 22, 2008\*\*

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Juvenile Male appeals from the district court's order transferring him for prosecution as an adult, pursuant to the Federal Juvenile Delinquency Act,

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

18 U.S.C. § 5032. We have jurisdiction under 28 U.S.C. § 1291, *see United States v. Gerald N.*, 900 F.2d 189, 190-91 (9th Cir. 1990), and we vacate and remand.

As a preliminary matter, we conclude that the district court did not abuse its discretion by extending the time for the appellant's counsel to file a notice of appeal, based on a finding of excusable neglect. *See Pincay v. Andrews*, 389 F.3d 853, 858-60 (9th Cir. 2004) (en banc); *see also United States v. Smith*, 60 F.3d 595, 596-97 (9th Cir. 1995).

However, we agree with the appellant that the district court abused its discretion by granting the government's motion to transfer proceedings to adult prosecution without making specific findings on the record as to all of the factors set forth in 18 U.S.C. § 5032. *See United States v. Doe*, 94 F.3d 532, 536-39 (9th Cir. 1996); *see also United States v. Brandon P.*, 387 F.3d 969, 976 (9th Cir. 2004) (noting that the government has the burden of establishing that prosecution as an adult is in the interest of justice). We therefore vacate the district court's April 24, 2006, transfer order and remand to the district court for further proceedings and supplementation of the record as necessary.

**VACATED and REMANDED.**